

NEW YORK'S HIGHEST COURT UPHOLDS INSURANCE FOR LEAD-BASED PAINT; INDOOR AIR QUALITY CLAIMS SHOULD FOLLOW SUIT

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Building owners are protected from sick building syndrome and lead-based paint claims by their all risk insurance policies, despite the so-called “absolute” polluter’s exclusion and the so-called “total” polluter’s exclusion, non-negotiated provisions, drafted by the insurance industry in the last 20 years and added to the standard-form insurance policies. The exclusions were drafted to exclude environmental pollution claims and do not expressly mention sick building syndrome or lead-based paint, indeed, some policies have specific lead exclusions.

Many courts, faced with the task of interpreting these exclusions, have found that liability from the exposure in a household or commercial setting to products or substances such as asbestos insulation, lead-based paint or emissions from everyday products which cause sick building syndrome, are not excluded. Under the interpretation advocated by insurance companies, virtually any substance that causes harm is a “toxic chemical,” “waste material,” “irritant,” “contaminant” or “pollutant,” thus rendering insurance coverage illusory. One insurance company argued that injuries from carbon monoxide buildup caused by people exhaling were excluded by the polluter’s exclusion.

New York Case

Building owners have won some major coverage victories in the past year. One such victory is New York’s highest court’s decision that the so-called “absolute” pollution exclusion did not excuse the insurance company’s defense obligation for the lead poisoning claim of an infant living in a rental apartment.¹ The primary policy had both a lead paint exclusion and a pollution exclusion; whereas, the umbrella policy had its own pollution exclusion, but no lead paint exclusion. The court held that since “the umbrella policy contains specific exclusions for other types of injuries including alcohol, asbestos and pollution claims, but not for lead paint” there was coverage for the lead paint claim.²

[The insurance company’s] argument, that the pollution exclusion clause of the umbrella policy excludes coverage for lead paint poisoning, must also be rejected. ‘To negate coverage by virtue of an exclusion, an insurer must establish that the exclusion is stated in clear and unmistakable language, is subject to no other reasonable interpretation, and applies in the particular cases.’ [citing *Rapid American*]. If the language of the policy is doubtful or uncertain in its meaning, any ambiguity must be resolved in favor of the insured and against the insurer. When the exclusionary clause does not include the particular loss that the insurance company alleges, then the insured is entitled to be defended and possibly indemnified.

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Defendant has not met its burden of showing that lead paint comes within the pollution exclusion of the umbrella policy. First, nothing in the definition of pollutants as defined in provision VII.K(3) of the umbrella policy indicates that lead paint is included in the term. That section defines pollutants as “smoke, vapors, soot, fumes, acids, sound, alkalies, chemicals, liquids, solids, gases, thermal “pollutant,” and all other irritants and “contaminants.” There is no language that demonstrates the drafter’s intent to incorporate lead paint into the pollution exclusion clauses. The insurer has not established that lead paint, in “clear and unmistakable language,” is included in the pollution exclusion. Moreover, both policies contain the general pollution exclusion while only the underlying policy contains a specific lead paint exclusion. Unless different meanings are to be ascribed to the pollution exclusion clauses in these policies, defendant’s position that lead paint injuries are excluded under the pollution exclusion, would render the specific lead paint exclusion in the underlying policy meaningless, in violation of settled canons of construction. It is at least ambiguous as to whether lead paint claims are excluded pursuant to the umbrella policy’s pollution exclusion. That ambiguity must be construed against the insurer. (citations omitted)³

The Appellate Division, Fourth Department also decided in favor of insurance coverage. The policyholder was sued by a person who suffered “injuries resulting from the exposure to toxic fumes during a construction safety course conducted by [the policyholder].”⁴ The injury occurred when “fumes were released when a roofing membrane was applied with a hot air gun during a classroom demonstration.”⁵ The court found that the so-called “total” pollution exclusion was ambiguous in these circumstances as,

An ordinary insured in plaintiff’s shoes would not understand that the policy does not cover a claim for bodily injuries such as those sustained by Rickard. First, an average insured could reasonably interpret that endorsement as applying to environmental pollution only. The purpose of the pollution exclusion historically has been to exclude coverage for environmental pollution. Given the history of the pollution exclusion and the terms used therein, it is entirely reasonable that an ordinary insured would conclude that the endorsement is applicable only to bodily injuries caused by traditional environmental pollution and not to bodily injuries arising from the use of a product for its intended purpose. Second, for the exclusion to apply there must be a “discharge, dispersal *** release or escape of pollutants” . The fumes that injured Rickard were part of the normal roofing process and confined to the area where the demonstration was conducted. Rickard was in the immediate vicinity when he inhaled them. “It strains the plain meaning, and obvious intent, of the language to suggest that these fumes * * * had somehow been ‘discharged, dispersed, released or escaped.’”

Third, the term “pollutant” is ambiguous because there is virtually no substance or chemical in existence that is not an “irritant or contaminant.”(citations omitted)⁶

The Second Department’s older decision in *A-One Oil Inc.*,⁷ which held that a contractor was not covered for bodily injuries and property damage for asbestos injuries resulting from the replacement of furnace covered with asbestos containing insulation, is in doubt after *Westview*.

The Second Circuit, interpreting New York law, held that the exclusion can reasonably be interpreted to apply only to environmental pollution, and not to all contact with substances

which may be classified as pollutants. The panel concluded that carbon monoxide poisoning from a faulty residential heater was not the type of environmental pollution contemplated by the polluter's exclusion.⁸ Applying New York law, the U.S. District Court for the Eastern District of New York refused to apply the polluter's exclusion to preclude coverage for sick building syndrome.⁹ The court rejected Public Service Mutual Insurance Company's attempt to avoid coverage by relying upon New York Court of Appeals decisions which:

all involved environmental pollution, and thus the issue of whether pollution exclusions were ambiguous with respect to non-environmental pollutants was neither addressed by, nor even mentioned in, these cases.¹⁰

The *Garfield Slope* court held that the exclusion does not bar coverage for injuries from carpet fumes, stating:

Because the carpet fumes at issue here were released inside, and because they typically are not the kind of environmental pollution about which state and federal regulators are concerned, it is at least ambiguous whether they fall within Public Service's "Absolute Pollution Exclusion."¹¹

The Southern District upheld insurance coverage in a lead-based paint poisoning case.¹²

Decisions Across the Country

Courts have ruled both ways in these types of cases, with the majority of recent cases decided in favor of policyholders. Courts which look at the exclusion as a whole generally decide that it was intended to exclude traditional environmental pollution and decide for the policyholder; whereas, those which focus on one word such as "fumes" or "contaminant" tend to find for the insurance industry. This article will discuss recent cases from a variety of jurisdictions demonstrating the varying circumstances in which insurance coverage has been upheld or denied.

Indoor Air Quality

While there are very few decisions specifically using the term "sick building syndrome" or "indoor air quality," several cases uphold insurance coverage for carbon monoxide poisoning claims. A few key decisions by state highest courts are illustrative. The Illinois Supreme Court traced the history of coverage for pollution and the polluter's exclusions and held that the so-called "absolute" polluter's exclusion did not preclude claims for carbon monoxide poisoning from a cracked heater at a commercial building:

Our review of the history of the pollution exclusion amply demonstrates that the predominate motivation in drafting an exclusion for pollution-related injuries was the avoidance of the "enormous expense and exposure resulting from the 'explosion' of *environmental* litigation." (Emphasis added.) Similarly, the 1986 amendment to the exclusion was wrought, not to broaden the provision's scope beyond its original purpose of excluding coverage for environmental pollution, but rather to remove the "sudden and accidental" exception to coverage which, as noted above, resulted in a costly onslaught of

litigation. We would be remiss, therefore, if we were to simply look to the bare words of the exclusion, ignore its *raison d'être*, and apply it to situations which do not remotely resemble traditional environmental contamination. The pollution exclusion has been, and should continue to be, the appropriate means of avoiding “the yawning extent of potential liability arising from the gradual or repeated discharge of hazardous substances *into the environment*.” (Emphasis in original). We think it improper to extend the exclusion beyond that arena.(citations omitted)¹³

The Massachusetts Supreme Court refused to apply the polluter’s exclusion to a restaurant whose fan malfunctioned, causing a patron to be poisoned by carbon monoxide, stating:

The exclusion should not reflexively be applied to accidents arising during the course of normal business activities simply because they involve a “discharge, dispersal, release or escape” or an “irritant or contaminant.”

* * *

The insureds obviously did not contemplate that their ordinary cooking operations would poison patrons while they were enjoying traditional Indian foods and dinners. Surely, when they purchased their policy from Western Alliance, they expected that accidents causing injuries to patrons at the restaurant due to the negligence of employees or the malfunctioning of ovens and other equipment — claims arising during the course of normal business activities — would be covered. A reasonable policyholder might well understand carbon monoxide is a pollutant when it is emitted in an industrial or environmental setting, [but] would not reasonably characterize carbon monoxide emitted from a [malfunctioning or improperly operated restaurant oven] as ‘pollution.’ (citation omitted)¹⁴

The Wisconsin Supreme Court reversed two lower court rulings which had excluded claims for bodily injury based on a buildup of exhaled carbon dioxide. Holding the definition of “pollutant” in the “absolute” pollution exclusion to be ambiguous, the court stated:

It is also significant that, unlike the nonexhaustive list of pollutants contained in the pollution exclusion clause, exhaled carbon dioxide is universally present and generally harmless in all but the most unusual instances. In addition, the respiration process which produces exhaled carbon dioxide is a necessary and natural part of life. We are therefore hesitant to conclude that a reasonable insured would necessarily view exhaled carbon dioxide as in the same class as “smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste.”¹⁵

While this result — that breathing is not a polluting activity — would appear obvious, the insurance company had denied coverage on this basis, and two lower courts had found for the insurance company.

Kentucky’s highest court upheld coverage for bodily injury from exposure to carbon monoxide fumes due to a leak in a dry cleaner’s boiler’s vent stack.¹⁶ The business was in a

strip mall with a common attic, and adjoining tenants claimed bodily injury. The court refused to deny coverage for what the trial court described as “inadvertent release of carbon dioxide during course of RSJ’s normal business activities.” While finding language of the polluter’s exclusion not inherently ambiguous, the *RSJ* court found that ambiguity “arises in the application of the provision to the specifics of a particular claim.”¹⁷ The court recognized the reasonable expectations of the policyholder, stating:

we are convinced that an ordinary business person would not apprehend the provision as excluding coverage for the type of damage incurred through an unexpected leak in a vent pipe.¹⁸

Nationwide Support for Policyholders

Most courts have found coverage for these types of claims relying on the rule that ambiguities in an insurance policy are construed against the insurance company and in favor of coverage, and on the reasonable expectations doctrine. A Connecticut state court upheld coverage for lead-based paint poisoning under the exclusion:

The clause may also be deemed ambiguous to the extent that a reasonable insured would interpret it to exclude coverage for claims arising out of factual circumstances more analogous to classic environmental pollution, but not for claims of personal injury allegedly sustained as a result of the type of paint covering the surfaces of rented premises.¹⁹

This doctrine enforces the policyholder’s reasonable expectations, recognizing that building owners expect their insurance policies to provide protection for indoor air quality or lead-based paint and similar claims. Nonetheless, insurance companies continue to deny insurance coverage based on a very broad reading of these exclusions.

The insurance companies’ over expansive reading of the so-called “total” pollution exclusion was demonstrated in California where it was contended that a policyholder whose plowing to plant grapes resulted in some soil entering adjoining water was barred from coverage by that exclusion.²⁰ The *Tsakopoulos* court rejected “defendants argue[ment] that the term ‘pollutants’ unambiguously includes soil displaced by Tsakopoulos’s plowing operations.”²¹

Soil discharged into previously-unspoiled waters of the United States might constitute a “contaminant” or an “irritant” if those terms were to be construed liberally. However, the definition of “pollutants” in each policy sets forth specific examples of contaminants and/or irritants: “smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste.” According to the principle of *ejusdem generis*, the proper construction of the term “pollutant” is therefore “restricted” to contaminants and irritants which are “of the same kind, class, or nature” as the specific examples listed. . . . Defendants argue that the use of the word “including” before the specific examples means that the definition of “pollutants” should not be limited to substances which are similar to the specified examples. However, the use of the word “including” does not affect the application of the *ejusdem generis* doctrine.²²

An Illinois appellate court examined the pollution exclusion in the context of a lead-based paint case.²³ The court found it had no evidence that lead was an “irritant” and as to whether lead based paint was a contaminant it found that “a reasonably prudent layperson could conclude” that the dictionary definition of contaminant, does not “encompass the lead in lead-based paint.”²⁴ The court found that

the definition [of contaminant] implies that there must be a contemporaneous association between the contaminating substance and the time it corrupts the substance, no matter how toxic, dangerous, or undesirable it might later be determined to be. Thus, the paint could only have been “contaminated” at the time the lead was added. We do not believe that a reasonably prudent layperson would understand that lead-based paint was contaminated from its time of creation. It was also not later contaminated since there was not subsequent corruption by lead, which caused the paint to become contaminated, such as would occur if lead pipes corrupted a water supply.²⁵

The United States Court of Appeals for the First Circuit interpreting Maine law held that a policyholder which injured a worker with “hazardous fumes discharged by roofing products used to ...repair the roof” was entitled to use its insurance coverage, despite a so-called “total” polluters exclusion.²⁶

[A]n individual. . . engaged in a business not known to present the risk of environmental pollution “would not understand that the Nautilus policy excluded coverage for injuries arising from the use of products associated with that business for the purpose for which those products [were] intended.” Indeed, such an interpretation would render the Nautilus policy virtually meaningless.²⁷

The Washington Supreme Court held there is insurance coverage for a suit by a diesel fuel delivery man who was significantly injured when a faulty intake valve caused the diesel fuel to backflow over him into his eyes, lungs and stomach.²⁸ The court examined the exclusion in the context of the case and the purpose of the exclusion, finding “the insurance companies’ objective in creating both clauses [the so-called “sudden and accidental” pollution exclusion and the so-called “absolute” pollution exclusion] was to avoid liability for environmental pollution . . . [and] relates to environmental damage.”²⁹ The court rejected the argument that because diesel fuel is a pollutant the exclusion precludes coverage. The delivery man

was not polluted by diesel fuel. It struck him.... Most importantly, the fuel was not acting as a ‘pollutant’ when it struck him.... We have previously held the average purchaser of a comprehensive liability policy reasonably expects broad coverage for liability arising from business operations and ‘exclusions should be construed strictly against the insurer.’³⁰

When underlying Indiana plaintiffs claimed they were “exposed to harmful toxic fumes from substances used to install carpet in the” policyholders building. The insurance company denied coverage based on the pollution exclusion.³¹ The court held that the pollution exclusion was ambiguous.

While the policy's definition of pollutants includes the term "fumes," it does not include carpet glue or any other substance used to install carpet. Furthermore, as determined by the Kiger court, this clause cannot be read literally as it would negate virtually all coverage.³²

Virginia also weighed in on the side of the policyholder. In a lead-based paint case involving lead poisoning of a child living in a rental unit, the court found "it is reasonable to conclude that the exclusion clause applies only to claims based on environmental pollution."³³

The Arizona Court of Appeals upheld a policyholder's right to insurance coverage for personal injuries arising from drinking water which was contaminated by bacteria at a mixed use development.³⁴ Prior to the injury, the City of Scottsdale had detected total and fecal coliform bacteria in the development's drinking water. Northbrook denied coverage under its commercial general liability policy on the grounds that the pollution exclusion precluded coverage, as "the total and fecal coliform bacteria that contaminated the water and caused Keggi's illness were excluded 'pollutants' within the meaning of the pollution exclusion clauses."³⁵ The court recognized that courts across the country have noted the breadth of the terms "irritant" and "contaminant" but that "pollutants" are limited to "irritants" and "contaminants" that are "solid, liquid, gaseous or thermal" and that "water-borne bacteria... do not fit neatly within this definition."³⁶ The court also found that "waste" as defined in the policy to include materials to be reclaimed or recycled "implies that the term refers to industrial byproducts, rather than organic matter which might have caused the contamination of the water."³⁷

We also note that the exclusion clause appears to describe events, places, and activities normally associated with traditional environmental pollution claims. . . . [and] directed at industrial insureds who must handle, store, and treat "hazardous wastes" in conducting their daily operations.... These provisions appear to be intended to preclude coverage for clean-up operations ordered under RCRA, CERCLA, and other federal or state environmental laws. Thus, the exclusion's context confirms that the drafters intended it to apply to traditional "environmental pollution" situations and substances.³⁸

"Public policy supports a narrow interpretation of the exclusion so that it does not eviscerate coverage otherwise reasonably expected by the insured."³⁹ Finally, the court looked to the context in which the policy was purchased and the nature of the claim:

[T]he transaction as a whole supports a finding that the exclusion does not apply in this case. Desert Mountain's CGL premium specifically contemplated the operation of golf clubs and restaurants, and even the provision of water through its water company. Certainly an insured who purchases CGL insurance expects to be covered for ordinary negligence in the course of its insured operations. Where the insured's operations include distribution or serving of water, an insured would reasonably expect to be covered for negligently distributing or serving contaminated water which causes an illness or disease. (citations omitted).⁴⁰

The news is not all good for policyholders. Contrast the following Missouri case with the Arizona water contamination case discussed above. The Missouri Court of Appeals decided in

favor of the insurance company that damages to a plumbing system caused by a restaurant's discharge of "waste, including kitchen grease, scour pads, heavy plastic, and underwear, ...in their use of the premises as a restaurant" were excluded from insurance coverage by the total pollution exclusion.⁴¹ The court based its reasoning on the policy's definition of "pollutant" as including "waste" and the dictionary's definition of "waste" as "refuse from places of human or animal habitation."⁴²

The Eighth District Court of Appeals in Ohio held that the so-called "absolute" polluters exclusion precluded coverage for a death caused by carbon monoxide poisoning from a faulty heating unit in an apartment owned by the policyholder.⁴³ The appellate court looked at a series of Ohio cases which had found the exclusion to be unambiguous and reversed. One Ohio case found for the policyholder. The owner of a residential dwelling sought insurance coverage under its Commercial General Liability policy for a lawsuit by tenants for injuries sustained because of exposure to lead based paint.⁴⁴ The policy did not have a lead paint exclusion. The insurance company denied coverage relying on the pollution exclusion. The court found that the policy language of the pollution exclusion was ambiguous as "shown by the fact that various courts in construing the language in question have arrived at conflicting conclusions as to the correct meaning, intent, and effect thereof, especially where the contract containing such language was executed subsequently to the conflicting judicial constructions."⁴⁵

Florida law continues to support the insurance companies on the pollution exclusion. The Eleventh Circuit affirmed a holding that the Tampa Housing Authority was not protected for a lead poisoning claim.⁴⁶ The Florida Supreme Court had applied the so-called "absolute" polluter's exclusion to preclude coverage for sick building syndrome. ."⁴⁷ This decision has been criticized for its "formal, superficial analysis and tone" as well as for its "fundamental misunderstanding of the reasonable expectations concept."⁴⁸

Conclusion

The majority of courts which have decided sick building syndrome, lead-based paint and similar claims have upheld the policyholder's right to insurance coverage despite the so-called "absolute" and "total" polluter's exclusions.

¹ *Westview Associates v. Guaranty National Ins. Co.*, No. 2000 NY. Int. 117(Ct. of App. October 26, 2000), reprinted in Mealey's Litigation Reports: Insurance, Nov. 1, 2000.

² Slip op. at 4.

³ Slip op. at 4-5.

⁴ *Roofers' Joint Training v. General Acc. Ins. Co.* No.,(1361), 00-00401, (N.Y. Sup. App. Div. Sept. 29, 2000), reprinted in Mealey's Litigation Reports: Insurance, Oct. 3, 2000, slip op. at 1-2.

⁵ *Roofers*, slip op. at 2.

⁶ *Roofers'*, slip op. at 3-4.

⁷ *A-One Oil Inc. v. Massachusetts Bay Ins. Co.*, 672 NYS2d 423 (2d Dep't 1998).

⁸ *Stoney Run Co. v. Prudential-LMI Commercial Ins. Co.*, 47 F3d 34 (2d Cir. 1995).

⁹ *Garfield Slope Housing Corp. v. Public Serv. Mut. Ins.Co.*, 973 FSupp 326 (EDNY 1997).

¹⁰ *Id.* at 337.

¹¹ *Id.*

¹² *Lefrak Org., Inc.v. Chubb Custom Ins. Co.*, 942 FSupp 949 (S.D.N.Y.1996).

¹³ *American States Insurance Co. v. Koloms*, 687 NE2d 72,81(Ill. 1997).

¹⁴ *Western Alliance v. Gill*, 686 NE2d 997, 999,1000 (Mass. 1997).

¹⁵ *Donaldson v. Urban Land Interests, Inc.*, 564 NW2d 728,732-33(Wis. 1997).

¹⁶ *Motorist Mutual Ins. Co. v. RSJ*, 926 SW2d 679(1996).

¹⁷ *Id.* at 680.

¹⁸ *Id.* at 682.

¹⁹ *Danbury Insurance Company v. Joseph Novella*, No. LPLCU 9503/991 15, 1993 WL 830935 (Conn. Super. Ct. Nov. 13, 1998).

²⁰ *Tsakopoulos v. American Manufacturers Mut. Ins. Co.*, No. S-99-0853 (E. D. Cal. Aug. 9, 2000), reprinted in Mealey's Litigation Reports: Insurance, Sept. 19, 2000.

²¹ *Tsakopoulos*, slip op. at 12.

²² *Tsakopoulos*, slip op. at 14-15.

²³ *Insurance Co. of Illinois v. Stringfield*, 292 Ill. App. 3d 371, 685 N.E.2d 980 (1997).

²⁴ *Stringfield*, 685 NE2d 980, 982-3 (1997).

²⁵ *Stringfield*, 685 NE2d 980, 983-984.

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- ²⁶ *Nautilus Ins. Co. v. Jabar*, 188 F3d 27, 28-29 (1st Cir. 1999)
- ²⁷ *Jabar*, 188 F.3d 27, 30.
- ²⁸ *Kent Farms, Inc. v. Zurich Ins. Co.*, No. 67635-6 (Sup. Ct. Wash. Apr. 27, 2000), reprinted in Mealey's Litigation Reports: Insurance, May 2, 2000.
- ²⁹ *Kent Farms*, slip op. at 5.
- ³⁰ *Kent Farms* slip op. at 5-6.
- ³¹ *Freidline v. Shelby Ins. Co.*, No. 71A03-0004-CV-132(Ct. of App. Ind. Nov. 29, 2000), reprinted in Mealey's Litigation Reports: Insurance, Dec. 12, 2000, slip op. at 2.
- ³² Slip op. at 9.
- ³³ *Unisun Insurance Co. v. Schulwolf*, No. L97-3179 (Cir. Ct, Norfolk, Va. August 23, 2000, letter opinion) reprinted in Mealey's Litigation Reports: Insurance, Nov. 1, 2000, slip op. at 4-5.
- ³⁴ *Keggi v. Northbrook Property and Cas.Ins. Co.*, No. 1 CA-CV 99-0566(Ariz. Ct. App., Dec. 5, 2000), reprinted in Mealey's Litigation Reports: Insurance, Dec.12, 2000.
- ³⁵ *Keggi*, slip op. at 8.
- ³⁶ Slip op. at 10-11.
- ³⁷ Slip op. at 12.
- ³⁸ *Keggi*, slip op. at 13-14.
- ³⁹ *Keggi*, slip op. at 17.
- ⁴⁰ *Keggi*, slip op. at 18.
- ⁴¹ *Boulevard Investment Company v. Capitol Indemnity Corporation*, No. ED77363 (Cir. Ct. St. Louis, Mo., Sept. 26, 2000), reprinted in Mealey's Litigation Reports: Insurance, Oct. 3, 2000, slip op. at 2.
- ⁴² *Id.* at 3.
- ⁴³ *Andersen v. Highland House Company*, No. 75769 (Ct. of App. Ohio May 11, 2000), reprinted in Mealey's Litigation Reports: Insurance, May 23, 2000, slip op. at 9-10.
- ⁴⁴ *Auto-Owners' Mut. Ins. Co. v. Van Harden*, No. 99-06-068 (Ct.Common Pleas, Van Wert Co.,Ohio), reprinted in Mealey's Litigation Reports: Insurance, Nov. 1, 2000.
- ⁴⁵ *Wood*, slip op. at 5.
- ⁴⁶ *Auto Owners Ins. Co. v. City of Tampa Housing Authority*, No. 00-10283 (11th Cir. Nov. 1, 2000), Reported in Mealey's Litigation Reports: Insurance, Oct. 3, 2000, slip op. at 2.
- ⁴⁷ *Deni Associates of Florida Inc. v. State Farm Fire & Casualty Ins. Co.*, 711 So.2d 1135 (Fla. 1998).
- ⁴⁸ *Stempel*, "Unreason in Action: A Case Study of the Wrong Approach to Construing the Liability Insurance Pollution Exclusion," 50 Fla. L. Rev. 463, 466 (1998).